Supreme Court, U.S.
FILED

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No _____ OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD JULIAN HANSON & KATHY ANN HANSON,

PETITIONERS –PRO SE,

VS.

THE STATE OF HAWAII, THE HONORABLE JUDGE GARY WB CHANG, AND THE COURT ADMINISTRATOR GLENNARD FONG

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF HAWAII

PETITION FOR A WRIT OF CERTIORARI

Ronald Julian Hanson & Kathy Ann Hanson

92-144 Kohi Place

Kapolei, Hawaii 96707-3303

808-672-0351

QUESTION (S) PRESENTED

I. Whether the Supreme Court of Hawaii erred in not granting a Writ of Mandamus based upon well-established practices, State laws, and case law precedence in violation of the Petitioners Fourteenth Amendment rights to Due Process and Equal Protection of Law?

II. Are the Petitioners Due Process Right and the opportunity to be heard violated when the trial court interferes with decision-making process of the Hawaii Supreme Court by issuing an order, not supported by the record in the trial court, on the same issue currently pending disposition by the high court?

III. Should a Writ of Mandamus issue holding accountable inferior court officials who fail to follow the Rules of Civil Procedure, state laws, and previous court orders that guide trial court proceeding for litigants?

IV. Should a Writ of Mandamus issue compelling a court official to carry out official ministerial duties (owed to an individual) so simple and plainly prescribed as to be free from doubt?

LIST OF PARTIES

1. Petitioner (s) Ronald Julian Hanson and Kathy Ann Hanson (husband and wife)
2. Respondent for the State of Hawaii, Mark J. Bennett, Attorney General for the State of Hawaii, 425 Queen Street, Honolulu, Hawaii 96813, (808) 586-1500
3. Respondent The Honorable Gary WB Chang, Circuit Court of the First Circuit Court, The Judiciary, Ka' ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii 96813, (808) 539-4767
4. Respondent Glennard Fong, Chief Court Administrator of the First Circuit Court Ka' ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii 96813, (808) 539-4767

5. Respondent a) Plaintiff & b) Counterclaim Defendant Palehua Community Association its attorneys are a) Anderson Lahne & Fujisaki LLP, representing is Attorney M. Anne Anderson 733 Bishop Street suite 2301, Honolulu, HI 96813, (808) 536-8177, b) Case Lombardi & Petit and associates affiliated, Attorney Michael G. Kozak, Pacific Guardian Center, 737 Bishop Street suite 2600, Honolulu, Hawaii 96813, (808) 547-5400
6. Respondent Trial Court Third Party Defendants are Eduardo B. Oliverio and Gemma D. Oliverio (husband and wife) their attorney is Ayabe, Chong, Nishimoto, SIA, & Nakamura, representing is Attorney Ronald Shigekane, Pauahi Tower Suite 2500, 1003 Bishop Street, Honolulu, Hawaii 96813

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner (s) respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

Orders from the highest State court without discussion appears at **Appendix A & Appendix B** to the petition and **are unpublished.**

The **published** dissenting opinion of the Honorable Hawaii Supreme Court Justice Simeon R. Acoba Jr. pointing out the inconsistent application of Hawaii Revised Statutes (HRS) § 602-4 (1993) by the Hawaii Supreme Court when issuing a Writ of Mandamus allowing for violations of the litigants fourteenth amendments rights to due process and equal protection of law. See State v. Hauanio No. 23034 (Hawaii, Aug. 30, 2001) attached at **Appendix E**

The published opinion/order of the Hawaii Supreme Court Tierney v. District Court, No. 29903 (July 8, 2009) is found at **Appendix S**

JURISDICTION

For cases from **state courts**:

1. The date on which the highest state court decided my case was April 5, 2010. A copy of that decision appears at **Appendix A**.
2. A timely petition for rehearing was thereafter denied on the following date: April 19, 2010, and a copy of the order denying rehearing appears at **Appendix B**
3. The interfering trial court order issued during the interlocutory phase of the appellate procedure appears at **Appendix C.**
4. The trial court order acknowledging and requiring the application of the Rules of Court in his courtroom appears at **Appendix D.**

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257 (a)

CONSTITUTIONAL ISSUES AND STATUTORY PROVISIONS INVOLVED

Constitutional

U.S Constitution- Amendment 1

U.S. Constitution- Amendment 4

U.S. Constitution- Amendment 14 (1)

Statutory

The **Fair Debt Collection Practices Act (FDCPA)**, 15 U.S.C. § 1692 et seq. Prohibitions appear at **Appendix F**.

Haw. Rev. Stat. § Hawaii Statutes- Section 602-4: Superintendence of inferior courts

Hawaii False Claims Act Section 661-21 et seq (QUI TAM) Action by private persons. Presented at length at **Appendix G**

Hawaii Rules of Civil Procedure (Court)

Rule 12

Defenses and objections when and how presented by pleading or motion, motion for judgment on the pleadings.

Rule 55 DEFAULT.

(a) Entry When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(d) The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

Rule 201 Judicial Notice of adjudicative facts.

When mandatory: A court shall take judicial notice, if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard--A party is entitled upon timely request to an opportunity to be heard

(f) Time of taking notice, judicial notice may be taken at any stage of the proceeding.

Rule 202 Judicial notice of law.

(b) Mandatory judicial notice of law; the court shall take judicial notice of

(1) The common law,

(2) The constitutions and statutes of the United States and of every state, territory, and other jurisdiction of the United States,

(3) All rules adopted by the United States Supreme Court or by the Hawaii Supreme Court, and

(4) All duly enacted ordinances of cities or counties of this State

Hawaii Supreme Court Standards (Guidelines for Mediators) (See Appendix H)

HAWAI'I REVISED CODE OF JUDICIAL CONDUCT See Appendix I

STATEMENT OF THE CASE

Case Development/ Historical background

This case began during the summer of 2006, with the invasion of the petitioner's home privacy by overt intrusive actions by the neighbors to the rear of their property (Eduardo & Gemma Oliverio) when the Oliverios allowed extended family members to move in to their home. The petitioners' made complaint to the HOA (incorporated in 1977), Palehua Community Association (PCA) on or about the early fall of 2006 to remedy the wrong consistent with the Declaration of Covenant and Conditions Restrictions of Highpointe (DCCR-H). Petitioners did not receive a response from PCA by late fall or required 60 days. The invasion of privacy

culminated with the petitioner's household pet being poisoned and dying under suspect conditions. At or about the same time a second neighbor to the right of Oliverios, (Mr. Paparelli) experienced their household pet dying too. Fearing for the safety of other household pets and family members, the petitioners sought out the City and County of Honolulu for a fence permit to erect a fence to stop this invasive activity. The City and County granted a permit allowing for a fence installation (the fence material of design material consistent with the HOA). The City and County later inspected and approved the fence on or about January 2007.

The necessary historical facts culminated in the filing of the current litigation are found in Appendix T that develop the background of the case at hand, Qui Tam connection, and motion to dismiss later referenced in the procedural history of the current case.

Procedural History this Current case

On August 19, 2009, Palehua Community Association (PCA) represented by the Law Firm: Anderson, Lahne, & Fujisaki LLP file a Complaint with the Circuit Court of the First Circuit Court for Injunctive Relief, against the petitioners for actions stemming from 2006 and that form the basis of the Qui Tam Complaint filed May 15, 2009. See **Appendix P**, 2ND Complaint **Injunctive Relief 1CC09-1-001935**

On August 28, 2009 petitioners file a Motion to Dismiss for a Lack of Jurisdiction pursuant Qui Tam Haw. Rev. Stat. (HRS) § 661- 28 Jurisdiction with a federal equivalent of 31 USC § 3729-3733

On September 4, 2009, the court issues an order NOTICE TO ALL PARTIES REGARDING THE STANDARD OF CONDUCT FOR SELF-REPRESENTED PARTIES

On September 8, 2009, the clerk of court denies the petitioner's access to the court and the ability to file a timely filed Amended Motion to Dismiss by refusing to accept the documents offered for filing. The petitioners

deliver the paperwork to the Court in chambers for review and acceptance.

On September 10, 2009, the petitioners receive a phone call at home from the court with instructions to return to chambers, pick up the documents earlier left, and file the documents with the clerk of court in disregard of HRCP Rule 5 (e) mandating the court file the documents.

On or about September 18, 2009, the plaintiff through one of their numerous attorneys, files a "catch all" EX PARTE MOTION with multiple "or" statements. The court denies the motion and the plaintiff files the motion again, 3-days later. Attached to both motions are two affidavits that contain false and misleading information for the court to refer. The petitioners point this out to the court October 8, 2009 and January 6, 2010. The court simply denies there is false or misleading information without adequate verification and refuses to hold the attorney accountable pursuant to Rule 11 HRCP and the Judicial Canons of Conduct.

The parties filed responsive pleading with the clerk of court between September 19 and October 5, 2009 in anticipation of the October 8, 2009 hearing on dismissal. Please see **Appendix Q** for the complete list of trial court entries.

October 8, 2009 is the date set for the hearing on the petitioner's motion to dismiss for lack of jurisdiction. The court first chastised the petitioners for their paperwork not meeting the court's standard. The Court denied the two motions to dismiss in disregard of Hawaii Revised Statute 661-28. The court orders the plaintiff to draft two appropriate orders for filing. The court orders the petitioners to file answers to the complaint within 10 days of the filing of the order from this court denying the motions to dismiss. **The orders denying dismissal are never issue or filed by the court.**

October 21, 2009 the petitioners believed it was in their best interest even without an order starting the time clock, filed and served Answers, Affirmative Defenses, Counterclaim, and Third Party Complaint with jury trial demand. A third party process server timely and properly

served all parties. Service of the counterclaim takes place October 30, 2009, Third Party Complaint Schuler Homes October 30, 2009, and Third party Defendants Oliverios November 2, 2009.

Shortly thereafter, the counterclaim defendant and third party Schuler Homes file motions to dismiss or for a more definite statement in a timely manner. The petitioners responded in opposition in a timely manner.

On December 2, 2009, crossing in the Clerk of Courts office by seven minutes, Third Party Defendants Oliverios file untimely Answers and Affirmative Defenses titled "Motor Vehicle tort claim" while the petitioners file a Motion for Default pursuant to Rule 55 of the HRCP with the Clerk of Court who later failed to enter default. Petitioners also file a formal motion for sanctions pursuant to HRCP Rule 11. A hearing date is set for January 6, 2010.

On December 23, 2009, petitioners serve Discovery, Admission, and Interrogatory requests upon the Plaintiff and Counterclaim Defendant (collectively) who later failed to comply properly.

On January 6, 2010, the petitioners arrive for court and chastised again for their paperwork not meeting the court's standard. The court grants Third Party Schuler Homes motion for release due to their nominal defendant status. The court denies default and judgment without prejudice, as the Clerk of Court did not enter default. The court informs the petitioners to resubmit their paperwork for a second attempt with the Clerk of Court for entry of Default, RULE 55 once properly drafted. The court denies the formal motion for sanctions against the attorney that had provided two false affidavits to the court.

The court ordered and granted a more definite statement that required the petitioners to file and served an Amended Counterclaim by January 21, 2010. The Plaintiff / Counterclaim Defendants had to file their responsive pleading within 60-days with the court ignoring the Hawaii Rules of Court that state a responsive pleading to a More Definite Statement shall be served within 10 days, HRCP Rule 12 (a) (3) (B). Finally, at the close of the hearing, the court orders a 60-day

moratorium and that the parties were to engage in mediation putting a stay on all litigation activity.

Between January 6, 2010 and March 7, 2010 during the 60-day moratorium, the Plaintiff, Counterclaim Defendants, and the Third party Defendants attorneys file 13 documents with the court in violation the "stay on litigation" while chastising the petitioners in writing for not responding to their documents during the court ordered moratorium.

On February 16, 2010, the Court issues an Order that conflict with the Hawaii Supreme Court's Policy for conducting mediation naming Charles Crumpton, Esq. as mediator. In this order, the court states that parties that have a concern or issue may bring an Ex Parte Motion before the court. This order further spells out requirements for all parties, NOT ATTORNEYS with which to comply.

On or about March 3, 2010 Charles Crumpton holds a preliminary mediation meeting in his law offices. The petitioners make it abundantly clear to the mediator they do not have the financial resources to engage in

mediation and disagree with the conditions of mediation set by the court for mandatory attendance and payment of $1,047.12 demanded by the mediator. The petitioners inform the mediator that they plan to file an Ex Parte Motion challenging the order compelling mandatory attendance and the payment of monies the petitioner's did not have.

On March 7, 2010 at midnight, the 60-day moratorium ends by operation of law, the same date and time for the Counterclaim Defendant to have filed and served a responsive pleading to the petitioners Amended Counterclaim.

On March 8, 2010 at 8:34 AM, the petitioners file for DEFAULT pursuant to Rule 12, Rule 55, and the Court's own order by filing for Default again with the Clerk of Court for the entry required by the trial court against both the Third party Defendants and Counterclaim Defendants. The petitioners also go up to the court's chambers (required prior to filing dispositive motions with the clerk), meet with the Court's clerk to obtain a court date for dispositive motions that are set for

May 4, 2010. The Petitioners return with the documents to the clerk of court's office and file the documents. Lastly, the Petitioners provide to the court an Ex parte Motion Challenging the Court's order of February 16, 2010 and mediators demand as allowed by court order February 16, 2010. Within the next hour, the petitioner receive a phone call from Court's clerk and told the Court is exercising Judicial Discretion and changing the Ex Parte Motion to a hearing Motion set on for March 11, 2010, 3-days later. The clerk instructed the petitioners to return to the courthouse, pick up the documents earlier provided, modify the motion to reflect the court date, and serve the opposing parties "ASAP." The petitioner's return to the courthouse, retrieves the motion, adds the court date/time, file it with the Clerk of Court then makes service upon opposing counsel by US Mail and FAX machine that same day before 6 PM.

On March 9, 2010, the petitioner receives by email and later the US Mail an Order issued by the Court at 9:58 a.m., the day prior, 1 hr and 20 minutes after the petitioner had originally filed with the Court on March 8,

2010 at 8:38 a.m. Shocked, the petitioners learn that the Court had retaliated and predisposed of the hearing set for March 11, 2010 prior to the petitioner having the opportunity to be heard by threatening the petitioners with severe sanctions if they did not comply with his order of February 16, 2010 and his current order of March 8, 2010 @ 9:58 AM. The Court ordered the petitioners to pay the monies requested in full and attend mediation on March 17, 2010.

On March 11, 2010 the Petitioners arrive at the courthouse in time for the 3:00 hearing and learn that the court had contacted the Sheriff's office in the courthouse and informed the Sheriff the petitioners were to be denied further access to his chambers. The petitioners go up to the courtroom in fear, not knowing what to expect. The court chastises the petitioners again for their paperwork not meeting the court's standard. The petitioners inform the Court that he has engaged in a Manifest Abuse of Judicial Discretion by threatening the petitioners and that a complaint would be filed with the Hawaii Commission on Judicial Standards shortly thereafter. The

petitioners inform the court they are scared to say anything for fear of further retaliation by the court and that it would be in their best interest to remain silent henceforth. The petitioners did not dare go against the court. The petitioners obtained the monies demanded by the court and mediator in light of the court's order of March 8, 2010 at 9:58 for $1,047.12 by certified check, and paid the mediator prior to attending court that day. Now the petitioners were unable to pay the same amount of monies that were due to the Hawaii State Department of Taxation.

On March 17, 2010 between 8:41 AM and 2:21 PM, the petitioners submit to house arrest against their will in the law offices of Charles Crumpton per court order and engage in mediation for six hours.

On or about March 18, 2010 the petitioners send a letter to the court informing him that the petitioners had complied with every provision of his Order of March 8, 2010 @ 9:58 AM and that the opposing parties failed to comply with his order. The petitioners demanded the Court impose the same sanctions threaten to the

petitioners by order of the court dated March 8, 2010 @ 9:58 AM upon opposing parties, who were now in contempt of court. The Court declined to punish the opposing parties represented by counsel again.

On March 23, 2010, the petitioners file a complaint with the Commission on Judicial Standards and a Motion for Recusal of the Honorable Judge Gary W.B Chang.

On or about March 27, 2010 the petitioners filed a Writ of Mandamus HRAP RULE 21 with the Hawaii Supreme Court against the Honorable Judge Gary WB Chang and the Court Administrator Glennard Fong for Abuse of Judicial Discretion for a failure to follow the Rules of Civil Procedures.

On or about April 1, 2010 secretly and behind closed doors the trial court prepares, but does not file, an order denying the two pending Motions for Default before the Clerk of Court, Glennard Fong, the substance of the Writ of Mandamus before the Hawaii Supreme Court.

On April 5, 2010, the Hawaii Supreme Court denies the Petitioners Writ of Mandamus

On April 8, 2010, the Petitioners file a Motion for Reconsideration with the Hawaii Supreme Court.

On April 12, 2010, the Hawaii Supreme Court issues an order suspending the time requirement to dispose of the pending motion and extends the time to April 30, 2010.

On or about April 14, 2010 the petitioners receive in the US Mail the Hawaii Supreme Court's Order of April 12, 2010 and an Order from the trial court that was drafted April 1, 2010 and filed April 12, 2010 denying the two motions for Default, the matter before the Hawaii Supreme Court.

The Petitioners checked the Ho' ohiki electronic court record data base and immediately learned that somehow to justify the court's planned denial drafted April 1, 2010, the two opposing parties, the subject thereof, somehow new to file challenges to the Motions for Default with the court. These responses filed April 6-9, 2010 (trial court entries 93-95) by opposing counsel were withheld from the petitioners in secrecy. This was clearly unacceptable conduct by the court and

the attorneys in this matter to interfere with the Supervisory duties of the Hawaii Supreme Court while the matter was still pending disposition.

On this same date, the petitioners hurriedly prepare and file a Supplemental Emergency Petition for a Writ of Prohibition to stop the Trial Court's interference with the Hawaii Supreme Court. The petitioner's believe the Hawaii Supreme Court did not consider the Writ of Prohibition since Supreme Court in the subsequent order denying reconsideration does not mention the document.

On April 19, 2010, the Hawaii Supreme Court denies the petitioners Motion for Reconsideration not needing the extension of time sought April 12, 2010 because of the trial court's interfering Order of April 12, 2010.

Subsequent to the Hawaii Supreme Court decision, ongoing trial court correspondence has taken place with the trial court ruling on Plaintiff ex parte motion to extend time to file a statement of the case.

On or about June 1, 2010 the petitioners received in the US Mail a trust fund accounting from the mediator,

Charles Crumpton, Esq. The Petitioners were shocked when they learned that the opposing parties, both PCA and Oliverios, never paid the required monies ordered by the court to the Mediator instead split it among the attorneys in direct contempt of the court's orders of Jan 6, 2010 Feb. 16, 2010, and March 8, 2010. Because of this new information on June 8, 2010, the Petitioner filed an Ex Parte Motion pursuant to the Court order of February 16, 2010 and March 8, 2010 and demanded "like" sanctions imposed upon the opposing parties due to their failure to comply with earlier mentioned court orders.

Shortly thereafter, the court exercises judicial discretion again and changes the Ex Parte Motion to a non-hearing motion.

Each Ex Parte Motion filed by the Petitioner in this court matter has been changed by the court's exercise of judicial discretion to non-ex parte; however, Ex parte Motions filed by opposing counsel are left untouched and addressed forthwith, clearly two standards of conduct.

REASONS FOR GRANTING THE PETITION

I

Hawaii Supreme Court Justice the Honorable Simeon Acoba (Appendix E Dissenting Opinion) sees the injustices in the decision making process of the Hawaii Supreme Court that violates the 14th Amendment rights of litigants when the court arbitrarily and capriciously self-limit their ability when applying or complying with State Law, or interpreting or applying case law precedent. The current case at-hand stems from the Petitioners filing a Qui Tam Action under Haw. Rev. 661-28, May 15, 2010. The statute states in plain language "No court shall have jurisdiction over an action under this part based upon... disclosures or allegation or transactions in a criminal, civil, or administrative hearing."

The petitioners desired to appeal the court's order of October 8, 2009 based upon the plain language of the statute, but were denied this right and opportunity as the court never issued an order-proving jurisdiction and was vague on the record.

Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action. *Melo* v. *US*, 505 F2d 1026. There is no discretion to ignore that lack of jurisdiction. *Joyce* v. *US*, 474 F2d 215. "The burden shifts to the court to prove jurisdiction." *Rosemond* v. *Lambert*, 469 F2d 416. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted. *Lantana* v. *Hopper*, 102 F2d 188; *Chicago* v. *New York*, 37 F Supp 150. A universal principle as old as the law is that proceedings of a court without jurisdiction are a nullity and its judgment therein without effect on either person or property. *Norwood* v. *Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void *ab initio*. *In Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term. *Dillon* v. *Dillon*, 187

P 27. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance. *Rescue Army* v. *Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. "A departure by a court from those recognized and established requirements of law however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction. *Wuest* v. *Wuest*, 127 P2d 934, 937. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris. *Merritt* v. *Hunter*, C.A. Kansas 170 F2d 739.

II

Justice in a courtroom must have balance for fairness. Litigants, regardless of status, financial means, or ability must be afforded the opportunity to be heard in a court of law by voice or by written correspondence. Judicial Canon 2.6 states in part ...the right to be heard is an essential component of a fair and impartial system of

justice... that protects the substantive rights of litigants. A parallel consideration was viewed in California when balance in the courtroom is lost. California approached the concept of balance in Hernandez v. Superior Court (Neal) (Feb. 23, 2004) - Cal. App. 4th No. B171030, 2nd Dist., Div 6. In this case, the trial court held counsel to strict guidelines that did not take into account mitigating or extenuating circumstances.

This also applies to courts issuing arbitrary and capricious orders not supported by the record or meant to interfere with other courts. The trial court retaliated twice by order against the Petitioners, first on March 8, 2010 @ 9:58 when the Petitioners were exercising their right to file an Ex parte motion consistent with the trial court order of February 16, 2010. Secondly, while the Petitioners were exercising their interlocutory appeal rights, the trial court prepared an order April 1· 2010 unsupported by the record. To justify the filing of the predisposed order on April 12, 2010, the court secretly sought out ex parte documents from opposing counsel to supplement the record for order issuance. These actions

by the court were a successful attempt precluding the Hawaii Supreme Court from issuing a Writ that held the Clerk of court accountable. Ordering denial of Default was clearly wrong U.S. Rahm, 993 F. 2d 1405, 1410 (9th Cir. 1993); MGIC v. Moore, 952 F. 2d 1120, 1122 (9th Cir. 1991). The judge is duty bound to cooperate, be candid, and honest with disciplinary agencies. The Hawaii Supreme Court is the disciplinary agency for the Clerk of Court exercising their supervisory authority pursuant to Judicial Canon. 2.12. Judicial Canon 2.16 states that a judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or lawyer. The trial court should have been silent on the matter pending before the Hawaii Supreme Court in light of being served a Motion for Recusal March 23, 2010 (trial court entry 88). A nexus could be drawn from the United States v. Grinnell Corp.384 U.S. 563; Liteky et al v. United States, 510 U.S. 540 (1994) that questions personal bias, prejudice, or recusal where impartiality might reasonably be

questioned and the subsequent disqualification in the pending matter.

III

All rules and statutes that guide the decision-making authority of the court and the expectation of compliance by litigants must be followed and applied equitably in a court of law. The United States Supreme Court has clearly established this concept for inferior courts to follow. The Supreme Court has stated a manifest abuse of judicial discretion or a persistent disregard of the Rules of Civil Procedure dictates that a Writ of Mandamus will lie to correct the trial court's willful disobedience of the rules laid down by this court is not controverted. Will v. United States, 389 U.S 90, 101 (1967); La Buy v. Howes Leather Co., 352 U.S. 249 (1957) and cases cited therein or in the case of a Manifest Abuse of Judicial Discretion Baker v. United States Steep Corp, 492 F. 2d 1074, 1077 (2d Cir. 1974)

In the current case at hand, the Court has engaged in a manifest abuse of judicial discretion by overt acts of file tampering with trial court entries 2, 6, and 7 not filed

by the court, but by the Petitioners as earlier described. The Petitioners were held against their will to engage in mediation and deprived of their liberty and property of $1,047.12; causing a financial hardship preventing them from paying required taxes to the State of Hawaii Department of Taxation. The court has repeatedly failed to follow the Rules of Civil Procedure specifically HRCP Rule 5 (e) for court filing documents, instead tampered with the above-stated entries to give the impression of rule compliance. The court failed to impose Rule 11 (b) sanctions upon attorneys for filing false information in two affidavits on or about September 17, 2009. The court disregarded Rule 12 (a) Time to respond to Third Party Complaint & Counterclaim with a more definite statement (Amended Counterclaim). The court disregarded Rule 16 (f) imposing sanctions for failure to comply [Plaintiff and Third Party Defendants] with Pretrial order (Jan. 6, 2010, Feb. 16, 2010, and Mar. 8, 2010. The court twice disregarded and interfered with Rule 55 Default application by the Clerk of Court. The court should have followed Rule 78 Disposition of Court

Business (Failure to issue an order for jurisdiction appeal Oct. 8, 2010).

Rule 201 Judicial affords parties the opportunity to be heard stemming from March 11, 2010 hearing and April 1-12, 2010 by issuance of an ex parte order not allowing for a response. Rule 202 Judicial Notice of Law (State law- Qui Tam & Case Law precedence). The trial court further interfered with the Petitioners rights to Petition the government for redress of grievances pursuant to the Hawaii Rules of Appellate Procedure Rule 21 Mandamus. The Trial court willfully issued two orders that conflicted with the Hawaii Supreme Court's policy on conducting mediation whereby threatening and compelling the petitioners to pay monies $1,047.12 and attend mediation (6 hours) even though it was not voluntary and against their will causing an invasion of privacy and false imprisonment.

The court has also violated multiple sections of the Code of Judicial Conduct as earlier described. Specifically Rule 1.1 Compliance with law, Rule 1.2 Promoting Confidence in the Judiciary, 2.1 Giving precedence to the

duties of judicial office, Rule 2.2 Impartiality and Fairness, Rule 2.3 Bias toward self-represented litigants, Rule 2.5 Competence, Diligence, and Cooperation by issuing timely orders for appeal and not to interfere with the duties of the Hawaii Supreme Court. Rule 2.6 ensures the right to be heard that was denied by order March 8, 2008, hearing March 11, 2010, and failure to permit a reply to be filed against the secret filing that took place April 1-9, 2010 consistent with Hawaii Rules of the Circuit Court Rule 7 (b). The court engaged in Rule 2.9 Ex Parte Communication on or about April 1-9, 2010 to interfere with the Hawaii Supreme Court causing an adverse decision to issue. Rule 2.11 Disqualification / Recusal in light of the aforementioned facts coupled with the pending Judicial complaint and Motion for Recusal presented to the court Mar.23, 2010 trial court entry #88; Rule 2.12 Supervisory duties engaging in a failure to act in holding the Clerk of Court accountable; Rule 2.15 Responding to Judicial and Lawyer misconduct as earlier clarified; and Rule 2.16 Cooperation with Disciplinary Authorities (i.e. pending Judicial complaint and where the

trial court SHOULD NOT have interfered with the Hawaii Supreme Court.

IV

On July 8, 2009, the Hawaii Supreme court addressed the very issue of issuing Writ of Mandamus compelling court officials to carry out ministerial duties in Tierney v. District Court Haw. Sup. Ct. No. 29903. In the Tierney case, the Writ of Mandamus was granted to Tierney, the appellant who on appeal mistakenly addressed all papers somewhat correct, but delivered them to the District Court rather than the Appellate Court. The Hawaii Supreme Court stated that Mandamus Relief is available to compel an official to perform a duty allegedly owed to an individual if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available. In Re Disciplinary Bd of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999), citing Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996). In the current case at hand, the Clerk of Court failed to enter Default, referenced by

the trial court January 6, 2010, against the Third Party Defendants and the Counterclaim Defendants, both of whom were in Default. This ministerial duty owed to the Petitioners was so simple and plainly prescribed as to be free from doubt. See also Bargman v. Brewer, 142 VT 367, 369-70, 454 A2d 1253, 1255 (1983)

V

Multiple Trial Court Errors/ Cumulative Error Doctrine

The Ninth Circuit Court in Parle v. Runnels, 387 F. 3d 1030, 1033-34 (9th Cir. 2004); Parle v. Runnels, 448 F. Supp 2d 1158, 1160-61 (N.D. Cal. 2006) and the U.S. Supreme Court have clearly established that the combined effect of multiple trial errors violates due process where it renders the resulting trial fundamentally unfair. Chambers v. Mississippi, 410 U.S. 284 (1973)" Parle, __ F.3d at __ (also citing Montana v. Egelhoff, 518 U.S. 37, 53 (1996)). In the current case, trial is unnecessary due to the dispositive nature of default judgment owed to the petitioners. "The cumulative effect of multiple errors can violate due process even where no

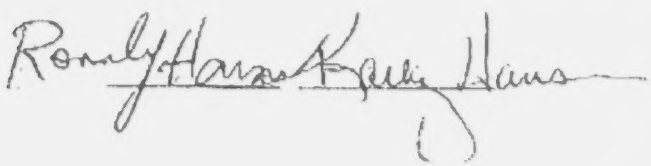
single error rises to the level of a constitutional violation or would independently warrant reversal." Id. (citing Chambers, 410 U.S.at 290 n.3)

CONCLUSION

Based on the foregoing, Petitioners respectfully submit that this Petition for Writ of Certiorari should be granted.

Dated this 28th day of June 2010

Respectfully submitted,



Ronald Hanson & Kathy Hanson

No. 3039

IN THE SUPREME COURT OF THE STATE OF HAWAII

RONALD HANSON and KATHY HANSON,

Petitioners

v.

THE HONORALBE GARY W.B. CHANG, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII, AND CLERK OF THE CIRCUIT COURT FO THE FIRST CIRCUIT, STATE OF HAWAII,

Respondents.

ORIGINAL PROCEEDING

(Civil No.09-1-1935)

(By: Moon, C.J.~ Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

Upon consideration of petitioners Ronald Hanson's and Kathy Hanson's March 23, 2010 papers

requesting this court to "intervene in [its] supervisory capacity," which we treat as a petition for writ of mandamus, as supplemented by petitioners' March 29, 2010 papers, it appears that petitioners fail to demonstrate a clear and indisputable right to relief. Therefore, petitioners are not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless
the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action.). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, April 5, 2010

s/ C. J. Moon, P. Nakayama, S. Acoba, J. Duffy, JJ.

Recktenwald

No. 3039

IN THE SUPREME COURT OF THE STATE OF HAWAII

RONALD HANSON and KATHY HANSON,

Petitioners

v.

THE HONORALBE GARY W.B. CHANG, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII, AND CLERK OF THE CIRCUIT COURT FO THE FIRST CIRCUIT, STATE OF HAWAII,

Respondents.

ORIGINAL PROCEEDING

(Civil No.09-1-1935)

ORDER SUSPENDNG TIME REQUIREMENT OF HRAP RULE 40 (d)

(By: Duffy, J., for the court)

Pursuant to HRAP Rule 2, the time requirement of HRAP Rule 40(d) is hereby suspended, and the time in which this court shall dispose of the pending motion for reconsideration is extended through April 30, 2010.

DATED: Honolulu, Hawaii, April 12, 2010

FOR THE COURT:

s/ J. Duffy

Associate Justice

No. 3039

IN THE SUPREME COURT OF THE STATE OF HAWAII

RONALD HANSON and KATHY HANSON,

Petitioners

v.

THE HONORALBE GARY W.B. CHANG, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII, AND CLERK OF THE CIRCUIT COURT FO THE FIRST CIRCUIT, STATE OF HAWAII,

Respondents.

ORIGINAL PROCEEDING

(Civil No.09-1-1935)

(By: Moon, C.J.~ Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

Upon consideration of the motion for reconsideration of the April 5, 2010 order denying the

petition for a writ of mandamus and the papers in support,

IT IS HEREBY ORDERED that the motion for reconsideration is denied.

DATED: Honolulu, Hawaii, April 19, 2010

s/ C. J. Moon, P. Nakayama, S. Acoba, J. Duffy, JJ. Recktenwald

NON-HEARING MOTIONS

FIRST CIRCUIT, FOURTEENTH DIVISION

DATE: THURSDAY, APRIL 1, 2010

JUDGE: HONORABLE GARY WON BAE CHANG, JUDGE PRESIDING

CLERK: AMY YAMAMOTO

REPORTER:

BAILIFF/LAW CLERK: KRISTIE KUTAKA

TIME: 12:00 A.M. 1CC 09-1-001935

PALEHUA COMM ASSN

VS.

RONALD JULIAN HANSON ETAL

Parties

PHILIP L LAHNE

SCOTT RICHARD GRIGSBY

GLENN S HORIO

GENE K M LAU

M. ANNE ANDERSON

FOR PALEHUA COMMUNITY AS

RONALD JULIAN HANSON

KATHY ANN HANSON

PRO SE

DAVID MARK LOUIE

JAMES SHIN

FOR SCHULER HOMES

RONALD MINORU SHIGEKANE

FOR EDUARDO B OLIVERIO

#1 - MOTION FOR DEFAULT PURSUANT TO HRCP - RULE 12 & 55 AGAINST COUNTERCLAIM DEFT PCA) (R HANSON, PRO SE) (FILED 03/08/10)

#2- MOTION FOR DEFAULT PURSUANT TO HRCP- RULE 12 & 55 AGAINST THRID PARTY DEFTS EDUARDO B. OLIVERIO, AND GEMMA D. OLIVERIO (R HANSON, PRO SE) (FILED 03.08/10)

**********MINUTE ORDER 4/12/10*********

THE COURT HAVING REVIEWED THE SUBJECT MOTION AND BEING DULY ADVISED OF THE RECORD AND FILE HEREIN AND FOR GOOD CAUSE APPEARING THEREFOR, THE COURT HEREBY RULES AS FOLLOWS:

RE MOTION #1 COURT HEREBY DENIES MOTION FOR DEFAULT PURSUANT TO HRCP-RULE 12 & 55 AGAISNT COOUNTERCLAIM DEFENDANT (PCA) FILED ON MARCH 8, 2010. PALEHUA COMMUNITY ASSOCIATION SHALL FILE A REPLY TO COUNTERCLAIM WITHIN FIVE (5) BUSINESS DAYS AFTER THE ORDER DENYING THIS MOTION IS FILED. COUNSEL FOR COUTERCLAIM DEFENDANT PALEHUA COMMUNITY ASSOCIATION INSTRUCTED TO PREPARE THE APPROPRIATE ORDER FOR THE COURT'S SIGNATE WITHIN 10 DAYS FROM TODAY.

RE MOTION #2, COURT HEREBY DENIES MOTION

FOR DEFAULT PURSUANT TO HRCP – RULE 12 & 55 AGAISNT THIRD- PARTY DEFENDANTS EDUARDO B. OLIVERIO, AND GEMMA D. OLIVERIO FILED MARCH 8, 2010.

COUNSEL FOR THIRD-PARTY DEFENDANTS OLIVERIO INSTRUCTED TO PREPARE THE APPROPRIATE ORDE FOR THE COURT'S SIGNATURE WITHIN 10 DAYS FROM TODAY.

COPIES OF THIS MINUTE ORDER MAILED TO COUNSEL FOR ALL PARTIES AND MAILED TO THE ADDRESS ON RECORD FOR ANY SELF-REPRESENTED PARTY VIA U.S.MAIL, POSTAGE PREPAID.

FILED DATED: 04-12-2010 BY ORDER OF THE COURT

s/ A. YAMAMOTO _____ CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CIVIL NO. 09-1-1935-08

INJUNCTIVE RELIEF

PALEHUA COMMUNITY ASSOCIATION

A HAWAII NON-PROFIT CORPORATION,

PLAINTIFFS,

VS.

RONALD JULIAN HANSON; KATHY ANN

HANSON; JOHN DOES 1-20; JANE DOES; DOE CORPORATION, PARTNERSHIPS, ENTITIES; AND DOE GOVERNMENTAL UNITS 1-10,

DEFENDANTS.

NOTICE TO ALL PARTIES REGARDING THE STRANDARDS OF CONDUCT FOR SELF-REPRESENTED PARTIES IN THE FIRST CIRCUIT COURT OF THE STATE OF HAWAII, FOURTENTH DIVISION

WHEREAS, at least one of the parties in this case does not have a lawyer and is representing himself/herself. Such a party is referred to as a "self-represented party"; and

WHEREAS, all parties, including a self represented party, are entitled to know what is expected of a self-represented party in cases pending in Judge Gary W.B. Chang's court; and

WHEREAS, this Notice informs all parties of Judge Chang's expectation regarding the standard of conduct of a self-represented party in his court; therefore, YOU ARE HEREBY NOTIFIED THAT, the court hereby orders the following:

1. A natural person has a right to represent himself/herself in court. Such right does not allow a natural person to act as an attorney for another party (person or a business), unless licensed to do so as an attorney.

2. A self-represented party is held to the same standards as every other party who is represented by an attorney. A self-represented party is required to substantially comply with the requirements of the following:

a. Hawaii Rules of Civil Procedure, and

b. Rules of the Circuit Courts of the State of Hawaii, and

c. Guidelines of Professional Courtesy and Civility for Hawaii Lawyers, and

d. Circuit Court Civil Administrative Orders, and

e. Hawaii Rules of Evidence, and

f. Custom and practice applicable to civil litigation in Hawai'i.

Repeated (at least three) violations of any of the abovemay be grounds for the imposition of appropriate sanctions, including but not limited to (1) striking witnesses, documents, claims, or defenses; (2) entry of default; (3) limiting time to present evidence or argument; (4)limiting the filing of documents; (5) awarding monetary sanctions; (6) awarding attorneys' fees, costs, or other expenses; and (7) obtaining leave of court before filing a document or conducting discovery.[1]

A self-represented party is expected to meet all of the requirements for the filing of documents in the proper form (including the proper number of copies), as well as the requirements for properly mailing or delivering a copy of any document filed or sent to the judge to all other parties or their attorneys in the case.

When filing a document that asks the judge to make a ruling, a party is required to bring:

One (1) **original** document;

a. One (1) **copy** for each of the other parties in this case;

b. Two (2) **copies** for the judge; and

c. One (1) **copy** for return to the filing party if he or she wishes to have a file-marked copy of the document back from the filing clerk after it is filed.

[Parties represented by an attorney are also subject to these same sanctions.]

A self-represented party shall follow Civil Administrative Order No. 9.5 which requires a party to **deliver to the office of the fudge** hearing the matter **two (2) file-marked copies** of any document that is filed for a court hearing. This procedure is required so that the judge can study each party's argument before the hearing.

3. The judge and his staff are not permitted by law to provide legal advice or suggestions regarding what a self-represented party should do.

4. Self-represented parties are expected to be courteous and respectful to all other parties, attorneys, and the judge and his staff.

5. Self-represented parties shall not write to the judge or his staff about the substance of the case without copying all other parties to the case with all correspondence. Additionally, self-represented parties shall not attempt to talk to the judge or his staff about the substance of the case without including all other parties to the case in any oral communications with the court.

6. Additional information may be found at the Hawai'i State Judiciary website at www.courts.state.hi.us.

DATED: HONOLULU, HAWAII, SEP 04, 2009

Gary W B Kim

JUDGE OF THE ABOVE-ENTITLED COURT

CIRCUIT COURT SEAL STATE OF HAWAII

State v. Hauanio No. 23034 (Aug. 30, 2001)

DISSENTING OPINION OF ACOBA, J.

Because, in my view, this case raises serious questions concerning, among other things, 1) the proper statutory construction of Hawai`i Revised Statutes (HRS) § 602-4 (1993), 2) conflicting case law applying HRS § 602-4, 3) superintendence of the lower courts under HRS § 602-4, and 4) the principle that all persons similarly situated must be treated the same, I strongly believe that our decision in this case should count for the future. I am constrained, therefore, to explain why that is so.

I.

HRS § 602-4 grants this court "general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law." HRS § 602-4 does not contain any limiting or qualifying language with respect to the exercise of the supreme court's supervisory power. Any

limitation on such supervisory power, then, is self-imposed.

Our case law evinces a search for an appropriate standard governing exercise of that power. In State, ex rel. Marsland v. Shintaku, 64 Haw. 307, 640 P.2d 289 (1982), this court stated that its supervisory power is used only "in rare and exigent circumstances." Id. at 313, 640 P.2d at 294 (citing Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 227, 580 P.2d 49, 53 (1978)). In my view, the rare and exigent standard is an erroneous adaptation from a statement in Gannett that concerned an application for a writ of prohibition against a district court judge. Speaking of the writ, this court in Gannett said, "[T]he writ of prohibition is an extraordinary remedy, and we have repeatedly said that prohibition will not be utilized as a substitute for appeal. . . . We have deviated from this rule only in rare and exigent circumstances." 59 Haw. at 227, 580 P.2d at 53 (citations omitted) (emphasis added).

In State v. Moniz, 69 Haw. 370, 742 P.2d 373, reconsideration denied, 69 Haw. 370, 742 P.2d 373 (1987), this court employed its supervisory power upon a showing of "compelling circumstances." Id. at 373, 742 P.2d at 376 (citations omitted). One of two reasons for employing supervisory power was the circuit court's failure to follow a statute requiring court approval before a mental patient was eligible for unescorted leave from the hospital. See id. at 375, 742 P.2d at 377. Similarly, the trial court here failed to comply with a governing statute. Thus, arguably, the facts in this case may also constitute compelling circumstances for exercising supervisory power because the constitutional right to a trial of Defendant-Appellant David Hauanio, Jr. (Defendant) is implicated.

Erroneously citing again to the statement in Gannett, this court in State v. Fields, 67 Haw. 268, 686 P.2d 1379 (1984), said that "prudential rules of . . . self-governance" apply in the exercise of the power granted under HRS § 602-4. Id. at 274, 686 P.2d at 1385 (internal quotation

marks and citation omitted) Admitting that "though the prudential rules may counsel against the consideration of [the] appeal," id. at 277, 686 P.2d at 1387, supervisory jurisdiction was nevertheless asserted in Fields. This court remanded the case to the circuit court, holding that warrantless searches could not be imposed as a condition of probation unless based on reasonable suspicion. See id. at 283, 686 P.2d at 1390.

Supervisory power was also exercised without a showing of "rare and exigent circumstances" or "compelling circumstances" in In re Carvelo, 44 Haw. 31, 352 P.2d 616 (1959). In that case, supervisory power was invoked to take jurisdiction of a case in which a court-appointed attorney for an indigent defendant did not timely file a notice of appeal because of a change in "statutory provisions governing appellate review of convictions and appeals in forma pauperis." Id. at 35, 352 P.2d at 621.

Considering the development of the law in this area, I believe that to effectuate the responsibility delegated

under HRS § 602-4 for "general superintendence" of the lower courts, we must exercise discretionary power tailored to the circumstances presented by the case under review, as this court did in Carvelo. Any other standard is unnecessarily restrictive, unsupported by the plain language of HRS § 602-4, and abdicates our obligation of "general superintendence" of the lower courts.

II.

Thus, in this case, if HRS § 602-4 means anything, it must, at a minimum, apply where a statute is apparently disregarded by a trial court and where such error impacts upon a substantial right, such as the constitutional right to a trial. See State v. Vaitogi, 59 Haw. 592, 597, 585 P.2d 1259, 1262-63 (1978) and People v. Morreale, 107 N.E.2d 721, 723 (Ill. 1952). The violation of HRS § 853-4(11) (Supp. 1997) here was called to the trial court's attention by the probation department, acknowledged by the prosecution, and moved on by the defense. [1]

The trial court proceeded to grant the motion for a DAG plea although Defendant was ineligible for such disposition under HRS § 853-4(11).[2] The error committed (1) contravenes the express language as well as the purpose and policy of the DAG plea statute, (2) undermines the respect we owe to the legislature, a co-equal branch of government, (3) imposes an obligation on the probation department to administer and enforce a court order in contravention of the statute, (4) arbitrarily excludes all other defendants similarly situated from the same dispensation granted Defendant,[3] and (5) entangles this court in a circumvention of the statute.

Moreover, under the majority's rationale, the only remedy available to Defendant to obtain review of the court's DAG plea order is to disobey it and, thus, incur a conviction and sentence that can be appealed. With all due respect, I consider that option an unconscionable one to place before Defendant when HRS § 602-4 affords a remedy "where no other remedy is expressly provided by law." Additionally, were that option followed by

Defendant, it would result in a future proceeding before this court on the same issue -- a duplicative waste of this court's resources and allied judiciary services and of the defense's and prosecution's efforts and time. Finally, whether the DAG plea disposition rather than a trial would be in the best interest of Defendant is a decision committed to Defendant and not one that should influence our disposition of this case.

I would exercise supervisory jurisdiction under HRS § 602-4.

1. The court was not authorized to grant Defendant's motion for deferred acceptance of a guilty (DAG) plea in the instant case because Defendant had been allowed a DAG plea in a prior criminal case in 1981. HRS § 853-4(11) (Supp. 1997) disqualifies defendants who had previously received a deferral order for a prior offense, from receiving a second deferral. Chapter 853 does "not apply when[t]he defendant has been charged with a felony offense and has been previously granted [DAG]

plea status for a prior offense, regardless of whether the period of deferral has already expired[.]" HRS § 853-4(11). (Emphasis added.)

Granting Defendant a second deferral period would conflict with the express mandate of HRS § 853-4(11) and the purpose of HRS chapter 853, that a "'first time, accidental, or situational offender[] . . . [should] be given the opportunity to keep his or her record free of a criminal conviction.'" State v. Putnam, 93 Hawai`i 362, 367, 3 P.3d 1239, 1244 (2000) (quoting 1976 Haw. Sess. L. Act 154 § 2, at 279 (emphasis and brackets omitted)). As Defendant had been previously granted a deferral, he is not a first time offender as contemplated by HRS chapter 853. Accordingly, Defendant was not eligible for a second deferral period at the time the court granted it.

2. I believe the court's departure from the plain command of HRS § 853-4(11) was the result of its conscientious belief that it was acting in the best interest of everyone.

3 See State v. Garcia, No. 23513, slip op. at 35 (Haw. Aug. 10, 2001) (stating that "when this court announces a new rule that benefits a defendant and applies the rule to the defendant in the case in which the rule is announced, it must be applied to all similarly situated defendants") (internal quotation marks and citations omitted).

Fair Debt Collection Practices Act

15 U.S.C § 1692 et seq.

Prohibited conduct

The Act prohibits certain types of "abusive and deceptive" conduct when attempting to collect debts, including the following:

- **Hours for phone contact**: contacting consumers by telephone outside of the hours of 8:00 a.m. to 9:00 p.m. local time[3]
- **Failure to cease communication upon request**: communicating with consumers in any way (other than litigation) after receiving *written* notice that said consumer wishes no further communication or refuses to pay the alleged debt, with certain exceptions, including advising that collection efforts are being terminated or that the collector intends to file a lawsuit or pursue other remedies where permitted[4]
- **Causing a telephone to ring or engaging any person in telephone conversation repeatedly or**

continuously: with intent to annoy, abuse, or harass any person at the called number.[5]

- **Communicating with consumers at their place of employment** after having been advised that this is unacceptable or prohibited by the employer[6]
- **Contacting consumer known to be represented by an attorney**[7]
- **Communicating with consumer after request for validation has been made**: communicating with the consumer or the pursuing collection efforts by the debt collector *after* receipt of a consumer's written request for verification of a debt made within the 30 day validation period (or for the name and address of the original creditor on a debt) and *before* the debt collector mails the consumer the requested verification or original creditor's name and address[8]
- **Misrepresentation or deceit**: misrepresenting the debt or using deception to collect the debt, including a debt collector's misrepresentation that he or she is an attorney or law enforcement officer[9]
- **Publishing the consumer's name or address** on a "bad debt" list[10]

- **Seeking unjustified amounts**, which would include demanding any amounts not permitted under an applicable contract or as provided under applicable law[11]
- **Threatening arrest or legal action** that is either not permitted or not actually contemplated[12]
- **Abusive or profane language** used in the course of communication related to the debt[13]
- **Communication with third parties**: revealing or discussing the nature of debts with third parties *(other than the consumer's spouse or attorney)* [14]
- **Contact by embarrassing media**, such as communicating with a consumer regarding a debt by post card, or using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business [15][16]
- **Reporting false information on a consumer's credit report** or threatening to do so in the process of collection[17]

Further, the FDCPA requires debt collectors to:

- **Identify themselves and notify the consumer**, in every communication, that the communication is from a debt collector, and in the initial communication that any information obtained will be used to effect collection of the debt[18]
- **Give the name and address of the original creditor** *(company to which the debt was originally payable)* upon the consumer's written request made within 30 days of receipt of the §1692g notice;[19]
- **Notify the consumer of their right to dispute the debt**, in part or in full, with the debt collector. The 30-day "§1692g" notice is required to be sent by debt collectors within five days of the initial communication with the consumer, though in 2006 the definition of "initial communication" was amended to exclude "a formal pleading in a civil action" for purposes of triggering the §1692g notice, [20] complicating the matter where the debt collector is an attorney or law firm. The consumer's receipt of this notice starts the clock running on the 30-day right to demand verification of the debt from the debt collector. [21]

- **Provide verification of the debt**[22] If a consumer sends a written dispute or request for verification within 30 days of receiving the §1692g notice, then the debt collector must either mail the consumer the requested verification information or cease collection efforts altogether. Such asserted disputes must also be reported by the creditor to any credit bureau that reports the debt. Consumers may still dispute a debt verbally or after the thirty-day period has elapsed, but doing so waives the right to compel the debt collector to produce verification of the debt. Verification should include at a minimum the amount owed and the name and address of the original creditor. [23]
- **File a lawsuit in a proper venue** - a debt collector may file a lawsuit, if at all, only in a place where the consumer lives or signed the contract[24]

This should not be understood to be an exhaustive list either of prohibited or required conduct

HAWAII FALSE CLAIMS ACT

FALSE CLAIMS TO THE STATE (661-21 et seq)
(As amended by Laws 2001 ch. 55.)

Chapter 661, Hawaii Revised Statutes

PART II. QUI TAM ACTIONS OR RECOVERY OF FALSE CLAIMS TO THE STATE

Â§661-21 Actions for false claims to the State; qui tam actions.

(a) Notwithstanding section 661-7 to the contrary, any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the State a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;

(3) Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or wilfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who may not lawfully sell or pledge the property;

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State; or

(8) Is a beneficiary of an inadvertant submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim; shall be liable to the State for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages that the State sustains due to the act of that person.

(b) If the court finds that a person who has violated subsection (a):

(1) Furnished officials of the State responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;

(2) Fully cooperated with any State investigation of such violation; and

(3) At the time the person furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than two times the amount of damages that the State sustains because of the act of the person. A person violating subsection (a), shall also be liable to the State for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than $500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.

(e) For purposes of this section:
"Claim" includes any request or demand, whether under a contract or otherwise, for money or property that is made to a

contractor, grantee, or other recipient if the State provides any portion of the money or property that is requested or demanded, or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

"Knowing" and "knowingly" means that a person, with respect to information:
(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information;
and no proof of specific intent to defraud is required.

(f) This section shall not apply to claims, records, or statements for which procedures and remedies are otherwise specifically provided for under chapter 231.

Â§661-22 Civil actions for false claims.

The attorney general shall investigate any violation under section 661-21.

If the attorney general finds that a person has violated or is violating section 661-21, the attorney general may bring a civil action under this section.

Â§661-23 Evidentiary determination; burden of proof.

A determination that a person has violated the provisions of this part shall be based on a preponderance of the evidence.

Â§661-24 Statute of limitations.

An action for false claims to the State pursuant to this part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 661-21 is committed.

Â§661-25 Action by private persons.

(a) A person may bring a civil action for a violation of section 661-21 for the person and for the State. The action shall be

brought in the name of the State. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this part.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State in accordance with the Hawaii Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii Rules of Civil Procedure.

(d) Before the expiration of the sixty-day period or any extension obtained, the State shall:

(1) Proceed with the action, in which case the action shall be conducted by the State and the seal shall be lifted;
or
(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.

(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

Â§661-26 Rights of parties to qui tam actions.

(a) If the State proceeds with an action under section 661- , the State shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:

(1) The State may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;

(2) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;

(3) The court, upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion impose limitations on the person's participation by:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the State elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense.

When a person proceeds with the action, the court without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon showing of good cause.

(d) Whether or not the State proceeds with the action, upon motion and a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty day period upon a motion and showing by the State that the State has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 661-25, the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have

the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Whether or not the State elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

Â§661-27 Awards to qui tam plaintiffs.

(a) If the State proceeds with an action brought by a person under section 661-25, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from

the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. Any person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If the State does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 661-21 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 661-21 , that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

(e) In no event may a person bring an action under section 661-25 :

(1) Against a member of the state senate or state house of representatives, a member of the judiciary, or an elected official in the executive branch of the State, if the action is based on evidence or information known to the State. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the state;

(2) When the person is a present or former employee of the State and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the State failed to act on the information provided within a reasonable period of time; or

(3) That is based upon allegations or transactions that are the subject of a civil or criminal investigation by the State, civil

suit, or an administrative civil money penalty proceeding in which the State is already a party.

Â§661-28 Jurisdiction.

No court shall have jurisdiction over an action under this part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media,unless the action is brought by the attorney general or the person bringing the action is an original source of the information. For purposes of this section:
"Original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this part that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

Â§661-29 Fees and costs of litigation.

The State shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees.

Hawaii Supreme Court

Hawaii Supreme Court Standards

(Guidelines for Mediators)

Preamble and Background

Mediation is a process of dispute resolution in which an impartial third party intervenes in a dispute with the consent of the participants and assists them in negotiating a voluntary and informed settlement. Mediation is a separate and distinct activity from arbitration, adjudication, evaluation, counseling and therapy, although it may be used with these and/or other conflict resolution procedures.

The Process

1. Description and Education - Mediation is a process of dispute resolution in which an impartial third party intervenes in a dispute with **the consent of the participants and assists them in negotiating a voluntary and informed settlement.** Mediation is a separate and distinct activity from arbitration, adjudication, evaluation, counseling and therapy,

although it may be used with these and/or other conflict resolution procedures.

2. Identification of Issues
3. Appropriateness of Mediation- **A mediator has a responsibility to postpone, suspend, or terminate the mediation process if one or more participants is unwilling or unable to participate meaningfully. The mediator should withdraw if the process is being abused or the mediator is unable to remain impartial.**

VIII. Parties Ability to Negotiate/Inability to Participate

If one of the participants indicated inability or appears to be unable to participate meaningfully in the mediation process, a mediator should postpone or cancel mediation.

IX. Concluding Mediation

A mediator should inform the participants of their right to withdraw from mediation at any time and for any reason. If a mediator believes that participants are unable or unwilling to participate meaningfully in the process or that a reasonable agreement is unlikely, a mediator may suspend, terminate

mediation or encourage the parties to seek other forms of assistance for the resolution of their dispute. If participants reach an impasse, a mediator should not prolong unproductive discussions that would result in emotional and/or monetary costs to the participants.

HAWAI'I REVISED CODE OF JUDICIAL CONDUCT

Appended by Order of

August 29, 2008 and December 17, 2008

Rule 1.1. COMPLIANCE WITH THE LAW

A judge shall comply with the law,* including the Hawai'i Revised Code of Judicial Conduct.

Rule 2.2. IMPARTIALITY AND FAIRNESS

A judge shall uphold and apply the law* and shall perform all the duties of judicial office fairly and impartially.*

Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT

(a) A judge shall perform the duties of judicial office without bias or prejudice.

(b) A judge shall not, in the performance of the duties of judicial office, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(c) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes, including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION

(a) A judge shall perform the duties of judicial office competently and diligently.

(b) A judge shall cooperate with other judges and court officials in the administration of court business.

Rule 2.6. ENSURING THE RIGHT TO BE HEARD

(a) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(b) A judge may encourage settlement of disputed matters in a proceeding but shall not act in a manner that coerces any party into settlement.

Rule 2.9. EX PARTE COMMUNICATIONS

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter

Rule 2.11. DISQUALIFICATION OR RECUSAL

(a) Subject to the rule of necessity, a judge shall disqualify or recuse himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice for or against a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

Rule 2.12. SUPERVISORY DUTIES

(a) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT

(b) A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the appropriate authority.*

(d) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Rule 2.16. COOPERATION WITH DISCIPLINARY AUTHORITIES

(a) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(b) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CIVIL NO. 09-1-1935-08

INJUNCTIVE RELIEF

PALEHUA COMMUNITY ASSOCIATION

A HAWAII NON-PROFIT CORPORATION,

PLAINTIFFS,

VS,

RONALD JULIAN HANSON; KATHY ANN

HANSON; JOHN DOES 1-20; JANE DOES; DOE CORPORATION, PARTNERSHIPS, ENTITIES; AND DOE GOVERNMENTAL UNITS 1-10,

DEFENDANTS.

ORDER NO. 1 REGARDING APPOINTMENT OF MEDIATOR

WHEREAS, Rule 12.2 of the Rules of the Circuit Courts of the State of Hawaii authorizes the court to issue an order compelling alternative dispute resolution, *which* includes mediation; and

•WHEREAS, in the exercise of the court's sound discretion, it appears that good cause exists to find and conclude that. CHARLES W. CRUMPTON, ESQ., is qualified 'and available to serve as a mediator for the above-entitled action; therefore

IT IS HEREBY ORDERED that the above-entitled action be referred to mediation on the following terms and conditions:

1) MEDIATOR: CHARLES W. CRUMPTON, ESQ., is appointed as mediator for the above-entitled action.

2) MEDIATION EXPENSES AXD FEES: The Mediator is authorized to charge the parties a reasonable hourly fee of not less than $250.00 for the Mediator's professional services and reasonable expenses incurred by the Mediator for the. subject mediation. Unless otherwise ordered by the Mediator or the' court, each party shall bear a share of the expenses and fees of the Mediator as follows:

Palehua Community Association	33.44%
Ronald/Kathy Hanson	33.34%
Eduardo/Gemma Oliverio	33.3%

The Mediator is empowered and authorized to use his sound discretion to determine whether, and in

what amount, it would be more *fair* and equitable, in light of all relevant considerations and circumstances, to apportion the expenses and fees for his professional services in a manner other than as indicated above. Each party shall bear their own expenses and attorneys' fees.

The Mediator is authorized to bill the parties for his services at intervals of once a month, or any other interval that the Mediator deems appropriate.

All parties shall make full payment to the Mediator within 30 days. If full payment is not timely made, upon notification by the Mediator, the court shall compel the non-paying party to

appear in court to show cause why such party should not be found to be *in* contempt of court for failing to obey this Order. Failure to make timely payment in full may constitute good cause for the

imposition of sanctions against the offending party.

3) DEPOSIT: Prior to the first mediation session with the Mediator or at any other time thereafter, if the Mediator determines it is appropriate or desirable, the Mediator may require that each party shall pay to the Mediator a deposit (by cash or dashier's check) *in* such amount as the mediator shall establish. Unless otherwise ordered by the Mediator, all patties deposits shall be in the same amount. Failure of any party to timely pay the required deposit may constitute good cause for the imposition of sanctions against the offending party.

4) EXPENSES/FEES DISPUTE RESOLUTION: If there is any dispute regarding.the Mediator's expenses or fees, the above-entitled court shall dispose of any such dispute.

5) MEDIATION SESSION: The Mediator is respectfully requested to convene the first mediation session as'soon as.practicable. The Mediator shall have full and exclusive authority over the schedule for the mediation.

6) MEANINGFUL PARTICIPATION: All parties shall be required to meaningfully participate in good faith in the mediation. The terms and conditions of any demand or offer to settle will be a consideration in determining whether any party has participated in good faith. It shall be a violation of this order for any party to fail to comply with any reasonable request or instruction from the Mediator, including but not necessarily limited to interstate travel and lodging of persons deemed by the Mediator as being necessary for the success of the mediation. The Mediatot or the court may entertain a request for sanctions to be imposed against any party or their attorney, representative, insurer, or indemnitor who violates this order.

7) MEDIATOR'S POWER: The Mediator shall have the following powers and authority:

a) to compel attendance of anyone at the mediation/

b) to hold and convene mediation sessions

with the parties (or their representatives) and their counsel; *in* person, or by telephone, as the Mediator (not'the parties) deems appropriate;

c) to issue sanctions against any party, their representative, or their attorney for any failure or violation that has (or could have) the effect of hindering the mediation process;

d) to arrange (through the 14th Division) to place the essential settlement terms on the court record;

e) to issue any order in aid of the mediation;

f) to serve as a liaison between the court and the parties with regard to the matter of settlement; and

g) any other power and authority that has been exercised by a mediator in Hawaii.

The Mediator shall have the discretion whether or not to exercise any of the powers and authority enumerated hereinabove.

8) IMMEDIATE REVIEW OF MEDIATOR'S ORDERS: The parties may seek an immediate review by the court of any order issued by the Mediator. Such review shall be made by written motion. The court will entertain, where appropriate, an ex parte motion to shorten time for a hearing on a motion to review an order issued *by* the Mediator, if time is of the essence. Any motion for immediate review shall not stay the action or the mediation; provided that the foregoing shall not prejudice or otherwise limit the power of the Mediator or the court to issue a stay.

9) Sanctions. Sanctions may be imposed upon any party or their attorneys or representative(s), who fails

to comply with any provision of this Order. Sanctions include, but are not necessarily limited to, payment of attorneys' fees, expenses, striking of claims, defenses, or witnesses, entry of default, and dismissal of a claim or claims.

10) Initiation. The plaintiff shall contact the Mediator within five (5) working days from the date this order is filed to arrange for the provision of the following information to the Mediator:

a) Name, address, telephone (office and wireless) number, and facsimile number of all counsel of record for the parties involved in the mediation;

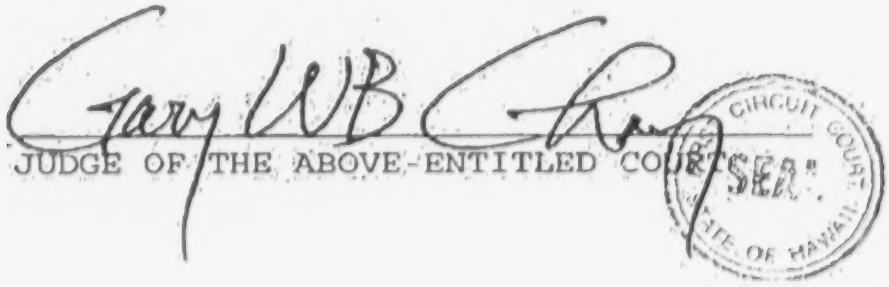
b) Trial/arbitration/motion date(s), if any;

Date(s) of any pending
matters, including but not
limited to motions, discovery
events, or deadlines; and

d) Summary of facts of the case and
procedural status of the case.

DATED: Honolulu, Hawaii, FEBRUARY 16, 2010.

DATED: HONOLULU, HAWAII, SEP 04, 2009



JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CIVIL NO. 09-1-1935-08

INJUNCTIVE RELIEF

PALEHUA COMMUNITY ASSOCIATION

A HAWAII NON-PROFIT CORPORATION,

PLAINTIFFS,

VS,

RONALD JULIAN HANSON; KATHY ANN

HANSON; JOHN DOES 1-20; JANE DOES; DOE CORPORATION, PARTNERSHIPS, ENTITIES; AND DOE GOVERNMENTAL UNITS 1-10,

DEFENDANTS.

ORDER EXTENDING MORATORIUM ON LITIGATION ACTIVITY AND
ORDER TO SHOW CAUSE

Order to show Cause return date: Date: 3/15/10 Time: 10:00 a.m. Judge Gary W.B. Chang

WHEREAS, attorney Charles W. Crumpton was appointed as the mediator in the above-entitled action by ORDER NO. 1 REGARDING APPOINTMENT OF MEDIATOR, filed herein on or about February 16, 2010 [hereinafter "Mediation Order"] pursuant to the public policy favoring alternative dispute resolution over trial, which includes mediation; and

WHEREAS, mediator Crumpton submitted to the court a letter dated March 4, 2010, raising the following two issues:

1. Whether the court would be willing to extend the moratorium on litigation activity in the instant case from March 7, 2010, to March 22, 2010.

2. Whether the court would address the matter of Ronald Hanson and Kathy Ann Hanson's refusal or failure to make the $1,047.12 deposit required by the mediator by March 12, 2010.

A copy of the March 4, 2010, letter from mediator Crumpton is attached hereto as Exhibit "A"; and

WHEREAS, the court indicated in the Mediation Order that sanctions may issue if any party failed to

abide by the court's order or any requirement imposed by the mediator, including the requirement that all parties make a deposit in an amount determined by the mediator; and

WHEREAS, due process entitles Ronald Hanson and Kathy Ann Hanson an opportunity to be heard before any sanctions be imposed; and

WHEREAS, the court does not wish to cause any delay in the mediation that is scheduled to occur on March 17, 2010.

THEREFORE, time is of the essence in addressing the mediator's concerns, thereby warranting immediate and expeditious action by the court; and

WHEREAS, good cause appears to extend the litigation moratorium imposed by the court to aid of the scheduled mediation; and

WHEREAS, the court finds that a premediation deposit of $1,047.12 for Ronald Hanson and Kathy Ann Hanson is a very reasonable sum; and

WHEREAS, good cause appears to consider possible sanctions for Ronald Hanson's and Kathy Ann Hanson's failure or refusal to make the required deposit prior to mediation; and

WHEREAS, the first opportunity the court has on its calendar after the March 12, 2010, deadline for the Hansons to pay the required deposit is Monday, March 15, 2010, at 10:00 a.m.; and

Good cause otherwise appearing therefor,

IT IS HEREBY ORDERED as follows:

1.The moratorium upon all litigation activity imposed upon all parties in the above-entitled action is extended until 5:00 p.m. on Monday, March 22, 2010, at which time the moratorium shall expire by operation of law

and without further order of the court or other formalities, unless otherwise ordered by thecourt (such as the Order to Show Cause set forth hereinbelow) or in the event of time sensitive matters. If and when the moratorium expires, the parties are free to engage in full and unrestricted (within the bounds of the law) litigation activity herein. The moratorium does not apply to any mediation activity, including any investigation or fact-gathering activity, that is ordered by the mediator.

2. **ORDER TO SHOW CAUSE.** The moratorium on litigation activity in this case does not apply to this Order to Show Cause. Defendants/Counter-claimants/Thirdparty plaintiffs **RONALD HANSON and KATHY ANN HANSON** are hereby ordered to appear in the courtroom of the Honorable Gary W.B. Chang, on the fourth floor of Kaahumanu Hale, located at 777 Punchbowl Street,

Honolulu, Hawaii, on **Monday, March 15, 2010, at 10:00 a.m.,** to show cause why sanctions should not be imposed against RONALD HANSON and KATHY ANN HANSON for refusing or otherwise failing to pay the deposit of $1,047.12 before March 12, 2010, as required by the court and the mediator. The possible sanctions include, but are not limited to:

a. The dismissal with prejudice of RONALD HANSON's and KATHY ANN HANSON's counterclaim and their third-party complaint filed in (1) "DEFENDANTS ANSWER TO. COMPLAINT WITH AFFIRMATIVE DEFENSES, COUNTERCLAIM AND THIRD-PARTY SUMMONS & COMPLAINT" filed herein on

October 21, 2009, and (2) "DEFENDANTS AMENDED COUNTERCLAIM PURSUANT TO HEARING JANUARY 6, 2010" filed herein on January 19, 2010; and

b. The payment of the attorneys'

fees and expenses incurred by any party and the mediator by reason of Ronald Hanson's and Kathy Ann Hanson's refusal or failure to timely pay their premediation deposit of $1,047.12 and this Order to Show Cause; and

c. Striking Ronald Hanson's and Kathy Ann Hanson's defenses, witnesses, and/or any other claims; and

d. The payment of a civil penalty or fine.

If **RONALD HANSON and KATHY ANN HANSON** refuse or otherwise fail to appear at the date, time, and place indicated above to show cause why they should not be sanctioned for refusing or failing to make the deposit by or before March 12, 2010, Ronald Hanson and Kathy Ann Hanson are hereby expressly notified that the court shall impose sanctions against them. If **RONALD HANSON and KATHY**

ANN HANSON do make the required deposit in a timely fashion, the mediator shall immediately contact the court and all parties to notify them that payment has been made and that the above-scheduled return on March 15, 2010, at 10:00 a.m., for the subject Order to Show Cause is canceled.

DATED: Honolulu, Hawaii, MARCH 8, 2010

AT 9:58 a.m.

DATED: HONOLULU, HAWAII, SEP 04, 2009

Gary WB Kon

JUDGE OF THE ABOVE-ENTITLED COURT

CIRCUIT COURT SEAL STATE OF HAWAII

OMITTED

Trial court transcripts of hearing held October 8, 2009 are a part of the record on appeal and currently located in the case file of the Hawaii Supreme Court

OMITTED

Trial court transcripts of hearing held January 6, 2010 are a part of the record on appeal and currently located in the case file of the Hawaii Supreme Court

OMITTED

Trial court transcripts of hearing held March 11, 2010 are a part of the record on appeal and currently located in the case file of the Hawaii Supreme Court

Qui Tam Case Filing

Hawaii State Judiciary Ho'ohiki

Non-Criminal Information Services

1CC09-1-001137

Case Title: State of Hawaii for Ronald and Kathy Hanson vs. Palehua Community Association, Anderson Lahne & Fujisake, and Hawaii First Inc.

Initiation Date: 5-15-2009

Initiator ID: APS

Cause of Action: Other Civil

Nature of Action: 02599

Confidential Code: N

Injunctive Relief Filing

Hawaii State Judiciary Ho'ohiki

Non-Criminal Information Services

1CC09-1-001935

Case Title: Palehua Community Association (PCA) vs. Ronald and Kathy Hanson

Attorneys for FCA: Anderson, Lahne & Fujisake

Initiation Date: 8-19-2009

Initiator ID: A6673

Cause of Action: Declarative Judgment

Nature of Action: 02504

Confidential Code: N

OMITTED

Trial court record currently located in the case file of the Hawaii Supreme Court

List of Exhibits provided to the Hawaii Supreme Court

NO. 30395

IN THE SUPREME COURT OF THE STATE OF HAWAII

****

RONALD JULIAN AND KATHY ANN HANSON,
Petitioner

Vs.

GLENNARD FONG, in his/her official capacity, as Chief Court Administrator of The First Circuit; and

HONORABLE GARY WB CHANG, in his official capacity, as CIRCUIT COURT JUDGE OF THE FIRST CIRCUIT, STATE OF HAWAII, FOURTEENTH DIVISION,
Respondent.

****

ORIGINAL-TRIAL COURT PROCEEDING

CASE NO. 1CC09-1-001935-08 (GWBC)

****

EMERGENCY PETITION FOR A WRIT OF MANDAMUS

Exhibits for the Petitioners

1. Ho'ohiki Document List pages 1-4, 1-2

Transcripts

2. October 8, 2009
3. January 6, 2010
4. March 11, 2010

Orders of the Trial Court

5. September 4, 2009 @10:00 AM- Self-Represented Practices
6. February 16, 2010 @ 10:08 AM - Mediator Selection
7. March 8, 2010 @ 9:58 AM- Threats of Sanctions upon Defendants

Motions/Letters/Faxes

8. Defendant's Qui Tam Action filed May 15, 2009 @ 3:45 PM
9. Motion & Amended Motion to Dismiss Dated September 10, 2010 @ 3:25 PM
10. Copies of Money Order for Subpoena Fees tendered September 17, 2009

11. Letter to the Court Dated September 18, 2009
12. Defendants Response in Opposition filed September 23, 2009 @ 8:27 AM
13. Defendants Reply to Plaintiff Memorandum in Opposition filed October 5, 2009
14. Defendant's Answers, Affirmative Defenses, Counterclaim, Third-party Complaint filed October 21, 2009 @ 3:07 PM
15. Notice of Motion for Sanctions filed November 13, 2009 @ 3:49 PM
16. Defendant Discovery et al request filed November 23, 2009 @ 3:40 PM
17. Defendant Request for Default against Third-party Defendants filed December 2, 2009 @ 3:19 PM
18. Defendants Response in Opposition (s) (two) December 17, 2009 @ 11:44 AM
19. Defendants Amended Counter Claim filed January 19, 2010 @ 3:20 PM
20. Certificate of Service Filed March 8, 2010 @ 8:39 AM
21. Motion for Summary Judgment filed March 8, 2010 @ 8:36 AM
22. Defendant's Ex Parte Motion Challenging Mediator filed march 8, 2010 @ 8:37 AM

23. Motion for Default Third-party Defendants filed March 8, 2010 @ 8:38 AM
24. Motion for Default Counterclaim Defendant filed March 8, 2010 @ 8:39 AM
25. Copy of check paying demanded amount $1,047.12 dated March 9, 2010
26. Letter to the Court filed March 18, 2010 @ 9:38 AM
27. Responsive letter from the court unfiled dated March 18, 2010
28. Letter to Clerk of Court/Court Administrator dated March 19, 2010 @ 11:43 AM
29. Motion for Recusal Judge Chang filed March 23, 2010 @3:13 PM

No. 29903

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL C. TIERNEY, Petitioners

v.

DISTRICT COURT OF THE FIRST CIRCUIT, STTE OF HAWAII, HONOLULU DIVISION, Respondent.

ORIGINAL PROCEEDING. CASE NO. 1P108-06561.

JUDGES: By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.

OPINION

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

Upon consideration of petitioner Michael C. Tierney's

petition for a writ of mandamus, it appears that the district court of the first circuit received from petitioner, on November 24, 2008, a letter and other papers. The letter, *inter alia,* instructed the district court to "Please file my Notice of Appeal." The letter's other papers were entitled "Notice of Appeal", "Affidavit in Support of Motion for Leave to Proceed on Appeal in Forma Pauperis", and "Motion for Appointment of Counsel on Appeal" (collectively "appeal papers"). The appeal papers were all captioned with district court Case No. 1P108-06561 and were all signed by petitioner and dated November 19, 2008. The district court filed petitioner's letter on November 24, 2008 and entered the letter on the docket of 1P108-06561. The district court placed the appeal papers in the file of 1P108-06561 as part of petitioner's letter filed on November 24, 2008. The district court did not file and process petitioner's appeal papers.

A writ of mandamus will issue where a petitioner demonstrates [*2] a clear and indisputable right to relief and a lack of other means to redress adequately the alleged wrong or obtain the requested action. **Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999)**. Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from

doubt, and no other remedy is available. *In* Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999), citing Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996).

The filing and processing of petitioner's appeal papers are ministerial duties of the district court. Petitioner has an indisputable right to have his appeal papers filed and processed. The district court ignored petitioner's request to file his appeal papers. Petitioner has no remedy other than mandamus. Therefore,

IT IS HEREBY ORDERED that the clerk of the appellate court shall process the petition for writ of mandamus without payment of the filing fee.

IT IS FURTHER ORDERED that the petition for writ of mandamus is granted as follows:

1. The District [*3] Court of the First Circuit, Honolulu Division, shall forthwith: (i) file and process, in Case No. 1P108-06561, the papers entitled "Notice of Appeal", "Affidavit in Support of Motion for Leave to Appeal in Forma Pauperis", and "Motion for Appointment of Counsel on Appeal" that are part of the letter filed on November 24, 2008 in Case No. 1P108-06561; (ii) serve

petitioner with file-stamped copies of the papers; and (iii) process the Notice of Appeal in accordance with **HRAP 11(b)**.

2. The Notice of Appeal filed by the district court pursuant to paragraph 1 shall be deemed to have been filed on November 24, 2008 for purposes of **HRAP 4(a)(1)**.

3. The district court shall file a copy of this order in Case No. 1P108-06561.

DATED: Honolulu, Hawai'i, July 8, 2009.

Subsequent Historical Events leading up to the Current Complaint

On or about February 16, 2007, PCA disputes the fence erection in writing and requests removal. The Petitioners challenge the dispute due to PCA failure to respond in a timely manner upon request made early fall 2006. PCA guidelines state, "No response made by PCA within 60 days is considered approved."

On or about June 2007, the Petitioners learn that the HOA –PCA is unlawfully operating the HOA business office on land zoned residential in violation of City and County of Honolulu ordinances. PCA boasts this unlawful conduct in a published newsletter circulated to homeowners. The Petitioners, who also happen to own property that borders this unsightly business operation, file complaint with the City and County of Honolulu for corrective action. The City and County of Honolulu open a case file against PCA and notified them to remove and vacate the premises zoned residential which PCA

subsequently do after receiving 1 30-day extension of time.

On or about August 7, 2007 PCA vindictively retaliates against the Petitioners with a second letter for fence removal and ups the ante by adding 3 more items of violation, one of which is a plastic 10 x 10 shed that had been installed in August 2005 that requests its relocation. A similar of letter indicating shed only non-compliance was also served upon the Petitioners neighbor to the left (Chris and Francine Ulu). The Petitioners, without argument, moved the shed to the rear of the yard willingly. To the date of this filing, the Ulu family never moved their shed nor did PCA follow up or act upon the letter to the Ulu family.

On or about March 21, 2008, PCA and the three neighbors that border the rear of the Petitioner home engage the law firm of Goodsill, Anderson et al and invoke Article V of the DCCR-H for mediation over the fence dispute. The Petitioners engage in dialogue with these parties and tender a counterclaim against PCA and

Oliverios to their attorneys. On or about April 25, 2008, the communication with PCA and three neighbor's attorneys ceases, they do not follow through with the Administrative Procedures initiated and governed by a 2-year statute of limitation, Article IV. On or about the summer of 2008 the Petitioners learn that PCA has created a fine policy and develops a priority of payment schedule with first monies being paid to attorneys for implementation on or about January 2009. Up to this point (31 years of HOA existence) the Petitioners were unaware of any existing covenant enforcement or fine policy implemented or enforced by PCA that included sanctions of any kind. Later via discovery, May 2010 the Petitioners learn of a PCA covenant and fine policy allegedly created in 1993 that no one, not even the Board members were aware showing that the 2008 policy was created for the sole benefit and chagrin of the Petitioners.

On or about March 9, 2009, Palehua Community Association (PCA) through its managing agent Hawaii First Inc assess the Petitioners' a $25.00 fine for the fence

dispute stemming from 2006 that increases by late fee of $20.00 by April 2009 to equal $45.00 due and payable. Notice is sent by United States Mail Service. The Petitioners dispute and deny this unlawful debt collection practice with PCA's managing agent, Hawaii First Inc telephonically and in writing. On or about March 30, 2009, out of the clear blue sky, PCA engages another law firm as Debt Collectors: Anderson, Lahne, and Fujisake et al who send to the Petitioner's by United States Mail a demand for $475.00 for attorney fees for services rendered as debt collectors in complete disregard of the earlier mentioned priority of payment schedule. The Petitioners immediately respond to the Anderson law firm and inform them of their unlawful debt collection practices, denial of any debt, and demand they stop this harassment on a matter guided by a 2-year statute of limitation that tolled in February 2009.

On or about April 17, 2009 the Petitioners inform law enforcement and the IRS (IRS form 3949) about PCA tax fraud in light of learning PCA had amassed in excess

of $500,000.00 as purported reserve funds and the probability of falsely claiming their unlawful business operation on Zoned residential land as a deduction as a non-profit organization. Later the Petitioners learned that the amount amassed by the non-profit PCA had grown to over $1,000.000.00 (May 2010).

On May 15, 2009, believing that PCA and their attorneys were in fact engaged in a pattern of unlawful debt collection practices (15 U.S.C. § 1692 et seq), RICO activity (18 U.S.C. § 1962 et seq) and trying to falsely collect a debt under the guise of Hawaii State Statute for the payment of attorney feeds, Petitioners file a QUI TAM action with the Circuit Court of the First Circuit based upon all set of facts stemming from summer 2006 to date providing all documents to the Hawaii State Attorney General as required by State statute. In this QUI TAM cause of action, the State of Hawaii and the Petitioners were identified as the Plaintiff. Palehua community Association (PCA), the law firm of Anderson, Lahne, Fujisaki et al , and the PCA's managing agent Hawaii

First Inc were named as Defendants. See Circuit court of the First Circuit Court file QUI TAM **1CC09-1-001137**

See attached Appendix O